



# STATE OF INDIANA

**MICHAEL R. PENCE, Governor**

**PUBLIC ACCESS COUNSELOR  
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October 30, 2015

Mr. Richard Volbrecht, Jr.  
9221 Parkway Drive  
Highland, Indiana 46322

*Re: Formal Complaint 15-FC-268; Alleged Violation of the Access to Public Records Act by the Town of Schererville, Office of the Clerk-Treasurer*

Dear Mr. Volbrecht,

This advisory opinion is in response to your formal complaint alleging the Town of Schererville, Office of the Clerk-Treasurer ("Office") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The Office responded via Ms. Janice Malinowski, Clerk-Treasurer. Her response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on September 23, 2015.

## **BACKGROUND**

Your complaint dated September 23, 2015 alleges the Town of Schererville, Office of the Clerk-Treasurer violated the Access to Public Records Act by failing to acknowledge your records request.

On September 23, 2015 you appeared in person to request records from the Office. Your request was hand-delivered to an assistant. However, you requested that Ms. Malinowski herself acknowledge your request. As of the filing of this complaint, you had not received an acknowledgement personally from her; however, it appears you received your documents on September 24, 2015.

On October 6, 2015 the Office responded. Ms. Malinowski stated your APRA request needed to be addressed by the Town Manager, who was unavailable. Ms. Malinowski notes your request was deemed fulfilled via an email transmission of records on September 24, 2015. Throughout the transaction, Ms. Malinowski was evidently unaware of the APRA request.



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## ANALYSIS

The public policy of the APRA states that “(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” See Ind. Code § 5-14-3-1. The Town of Schererville’s Clerk-Treasurer’s Office is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Offices disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

A request for records may be oral or written. See Ind. Code § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. See Ind. Code § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. See Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

The APRA does not specify what an acknowledgement looks like or who in the public agency must give you a receipt of your request. In fact, an acknowledgment of an in-person request often is satisfied during the contemporaneous exchange. It matters not if this is effectuated by the front desk personnel or by the public office-holder herself. Your grievance appears to be not regarding the actual acknowledgement itself, but by who gave the acknowledgement. As long as someone from the public agency acknowledges and/or fulfills your request, the obligations under the law are fulfilled.

It would indeed be troubling if no one ever acknowledged your complaint; however, based upon the information provided, you received an email from someone in the Planning & Building Department fulfilling your request on September 24, 2015.

The purpose of this Office is not to play ‘gotcha’ with public agencies. I am concerned when deadlines are missed and requestors of public information do not receive documents in a timely manner. However, you were sent the information within 72 hours of your request.

Please do not hesitate to contact me with any questions.



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Regards,

A handwritten signature in black ink, appearing to read "LH Britt", written over a horizontal line.

Luke H. Britt  
Public Access Counselor

Cc: Ms. Janice Malinowski